A E R (133)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 131 of 2001

Sanjeev Kumar Singh & others

-Versus-

Union of India & others

Post for order on 23rd January, 2006.

Sd/-
Satish K. Agnihotri
Judge
20.1.2006

Noted Mrs. V. K. Reddy counsel for the Petitioner. 23.1.06

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Writ Petition No.131 of 2001

Petitioners:	1.	Sanjeev Kumar Singh, Son of Sri Negeshwar Singh, aged about 30 years.
	2.	Raj Narayan Yadav, Son of Daya Ram Yadav, aged about 31 years.
	3.	Virendra Choudhary, Son of Ramchandra Choudhary, aged about 31 years.
	4.	Pramod Singh, Son of Gojo Singh, aged about 31 years.
	5.	Jitendra Bahadur Patel, Son of Mewa Ram, aged about 29 years.
	6.	Shriram Singh Yadav, Son of Harhangi Singh, aged about 30 years.
	7.	Ramraj Kumar, Son of Banshilal, aged about 29 years. All are residents of Bishrampur, Tehsil- Surajpur, District- Surguja (C.G.).
	8.	Jawahar Lal Rajwade, Son of Jairam Rajwade, aged about 26 years, resident of village Kumda Basti Tehsil- Surajpur, District Surguja (C.G.).
	9.	Rajendra Prasad Jaiswal, S/o Shri R.C. Jaiswal, aged about 28 years, Resident of village Karanwa, Surajur, Distrit- Surguja (C.G.).
	10.	Sushil Mishra, Son of Nageshwar Mishra, aged about 28 years, Resident of Ambikapur, District- Surguja (C.G.).
	Versus	
Respondents	1.	Union of India, Acting through the Secretary, Ministry of Coal, New Delhi.
	2.	Chairman, Coal India Limited, Kolkata (West Bengal)
	3.	Chairman-cum-Managing Director, South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.).

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4. General Manager, South Eastern Coalfields Ltd., Bishrampur Area, Bishrampur, District- Surguja (C.G.).
5. Collector, Surguja, Ambikapur (C.G.).
6. Sub Divisional Officer (Revenue), Surajpur, District- Surguja (C.G.).
7. Ramanand, Son of Raghu, aged about 30 years, Resident of Village- Kamlapur, Tehsil and District- Surguja (C.G.).
8. Sheo Balak, Son of Raghu, aged about 28 years, Resident of Village- Kamlapur, Tehsil and District- Surguja (C.G.)

Shri Manindra Shrivastava, Senior Advocate with Shri V. K. Pandey, Advocate for the petitioner.

Shri Prveen Das, Advocate for the Respondents No. 2, 3 and 4.

None for the Respondents No. 1, 5, 6, 7 and 8.

ORDER

(23rd January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioners are residents of villages Kashkela, Lakshmanpur and Kamlapur of District- Surguja. They were holding lands, descriptions of which are as under:-

Name of the Petitioner	**Place/village**	**Area**	**Khasra No.**
1. Sanjeev Kumar Singh	Kashkela	405	249/1, 250/2(b), 236/2 & 237
2. Raj Narayan Yadav	Lakshmanpur	344	137/7
3. Virendra Choudhari	Kamlapur	405	114
4. Pramod Singh	Kashkela	405	5/1, 23/1, 358/1 & 253/1
5. Jitendra Bahadur Patel	Kashkela	405	38/2, 43/2
6. Shriram Singh	Kashkela	405	534/1, 624, 398/1, 402/1 & 528/1
7. Ramraj Kumar	Kamlapur	405	42/2
8. Jawaharlal Rajwade	Kamlapur	405	506/1, 541/2

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9.	Rajendra Prasad Jaisawal	Kashkela	405	17/2
10.	Sushil Mishra	Kashkela	405	358/2

2. The lands of the petitioners, as stated above, were acquired under the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (for short 'the Act, 1957'). The notification under the Act, 1957 was published in the Gazette on 21.8.1996 (Annexure P/1) whereby land holdings of the petitioners along with other similarly situated persons of concerned villages and other adjoining villages were acquired. Under the Rehabilitation Policy of the then Government of Madhya Pradesh dated 25th September, 1991 (Annexure R/1), one person of the family whose 2/3rd agricultural land was acquired would be eligible for getting employment by the S.E.C.L. on availability basis. The provision of 'Employment Facility' under the said policy, is reproduced herein below:

"3. EMPLOYMENT FACILITY

a) One person of that family, whose residential land and more than 1/3rd land have been acquired will be eligible for getting employment by SECL on first priority basis.

b) One person of each family, whose non-irrigated land more than 3 acres and irrigated land more than 2 acres have been acquired will be eligible for getting employment by SECL on second priority basis.

c) One person of such family, whose whole agricultural land and/or residential land have been acquired, will be eligible for getting employment by SECL on third priority basis.

d) One persons of such family whose 2/3 agricultural land has been acquired, will be eligible for getting employment by SECL on availability basis.

e) Landless oustees of concerned area, whose essential livelihood have been affected, will be provided training

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through the medium of self employment plan with the help of the State Govt. SECL will evaluate the need for training of members of ousted families and their training shall be arranged by SECL"

3. The petitioners, who are admittedly family members of the land holders, applied for employment as per rehabilitation policy of the State Government for acquisition of their lands under the provisions of the Act, 1957. The petitioners were declined employment on the ground that subsequently by amendment dated 21.12.1995 (Annexure R/2), the Rehabilitation Policy dated 25.9.1991 has been amended to the extent that a family member, whose residential land and agricultural land, as stated in the policy dated 25.9.1991, would be eligible for employment only in case they were holding the land for 20 years continuously and had taken their education there, itself.

4. Being aggrieved, the petitioners have filed this petition under Article 226/227 of the Constitution of India seeking a direction against the respondents No. 1 to 6 that the respondents No. 1 to 6 be directed to issue appointment orders as they have done in case of the respondents No. 7 and 8.

5. Shri Manindra Shrivastava, learned Senior counsel with Shri V. K. Pandey, learned counsel for the petitioners submitted that the similarly situated several persons, whose lands were acquired under the same notification and they were the residents of either the same village or other adjoining villages, have been given employments. The Respondents No. 7 and 8 are some of those persons, who were given appointment when their lands were acquired after amendment in the original policy dated 25.9.1991, issued under the same notification. It was contended that the

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policy of the respondents No. 1 to 6 is discriminatory, arbitrary and unreasonable as the respondents No. 1 to 6 have applied the principle of pick and choose, in favour of some persons and have rejected the claim of the petitioners without assigning any reason. Learned counsel further contended that the change of policy by amendment dated 21.12.1995 is also arbitrary, unreasonable and unconstitutional. However, there was no challenge to the policy in this petition.

6. Shri Praveen Das, learned counsel appearing for the respondents No. 2 to 4, per contra, categorically admitted that it was true that some of the similarly situated persons, whose lands had been acquired along with the petitioners had been granted employment and that was contrary to the amended policy dated 21.12.1995, even then, the petitioners could not be granted the same relief because the petitioners are not entitled to the relief of employment firstly, on account of the amendment in the rehabilitation policy, and secondly, one wrong committed by the respondents could not be allowed to be perpetuated in the case of the petitioners also.

7. I have heard learned counsel for the parties and perused the records appended to the petition and returns.

8. Before considering the facts of the case, it is necessary to observe that this Court by order dated 11.11.2005 directed the respondents No. 2 to 4 to file a chart stating name of the owner of the land, area of the land, date of acquisition of the land, amount of compensation paid, if any, and appointment if any given to a member of the oustee family. The Respondents No. 2 to 4 despite direction of this Court failed to file the required chart, indicating

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facts of the present petitioners as well as other similarly situated persons. The Respondents No. 2 to 4 had not complied with the order and deliberately and intentionally kept the information back on one or other excuse. The conduct of the respondents No. 2 to 4 clearly establishes that the respondents No. 2 to 4 have not followed amended rehabilitation policy dated 21.12.1995 uniformly and honestly in case of the land holders whose lands were acquired after 21.12.1995. The Respondents No. 2 to 4 themselves have violated the amended rehabilitation policy.

9. Learned counsel for the respondents No. 2 to 4 have clearly admitted that some of the similarly situated persons have been granted relief of employment and grant of relief in favour of some similarly situated persons cannot entitle the petitioners to claim the similar relief in the teeth of the amended rehabilitation policy dated 21.12.1995.

10. The Supreme Court in Ramana Dayaram Shetty Vs. The International Airport Authority of India & others, AIR 1979 SC 1628 has held as under:-

> "21. This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decisions of this Court in E. P. Royappa v. State of Tamil Nadu, (1974) 2 SCR 348 : (AIR 1974 SC 555) and Maneka Gandhi v. Union of India, (1978) 1 SCC 248: (AIR 1978 SC 597) that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an

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essential element of equality or non-arbitrariness is projected by Article 14 and it must characterize every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory....."

10. The Supreme Court in National Insurance Co. Ltd. New Delhi Vs. Jugal Kishore and others (1988) 1 SCC 626 has observed as under:-

"10.....This Court has consistently emphasized that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly....."

11. The Supreme Court in Chandigarh Administration & another Vs. Jagjit Singh & another { (1995 1 Supreme Court Cases 745}, relied on by learned counsel for the Respondents No. 2 to 4, has held as under:-

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in

favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law- indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law- but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course barring exceptional situations – would neither be advisable

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nor desirable. In other words, the High Court cannot ignore the law and the well accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)."

12. The Supreme Court in Faridabad Ct. Scan Centre Vs. D.G. Health Services and others { (1997) 7 S.C.C. 752}, cited by learned counsel for the respondents No. 2 to 4, has held as under:-

"3. We fail to see how Article 14 can be attracted in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and, therefore, there will be discrimination against others if correct orders are passed against them. In fact, in the case of Union of India (Rly. Board) v. J. V. Subhaiah[2] the same learned Judge in his judgment has observed in para 21 that the principle of equality enshrined under Article 14 does not apply when the order relied upon is unsustainable in law and is illegal. Such an order cannot form the basis for holding that other employees are discriminated against under Article 14. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to

others. With respect, the decision in Mediwell Hospital[1] does not lay down the correct law on this point."

13. It is well settled principle of law that wrong order cannot be allowed to be perpetuated on the ground of discrimination in the touchstone of Article 14 of the Constitution of India. However, in the facts of the present case where the family member of the oustee landholders' were given appointment before amendment dated 21.12.1995 and there was no condition of period of holding of the land for 20 years and education at the same place. Though, validity of the amended provision has not been under challenge, but in the present case all of a sudden without establishing any rationale or reasonable nexus to the amendment was sought to be made in their rehabilitation policy. It is desirable in the interest of justice that the case of the petitioners be also considered by the respondents No. 2 to 4 in accordance with law, particularly in view of the fact that this is a beneficial policy with the welfare purpose of rehabilitation of the oustees with proper source of income and compensation thereof for acquisition of land, so that the oustees can live in a dignified manner.

14. For the reasons stated above, the Respondents No. 2 to 4 are directed to consider the cases of the petitioners for grant of employment in lieu of the acquisition of lands, in accordance with law.

15. With the above direction, the petition stands disposed of finally. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge